



State Bar of Michigan

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John T. Berry
Executive Director

September 3, 2002

RECEIVED

SEP 03 2002

OFFICE OF
THE CHIEF JUSTICE

Ms. Linda Mohny Rhodus
Administrative Counsel
Michigan Supreme Court
P.O. Box 30104
Lansing, MI 48909

Re: Various Proposed Court Rule Amendments

Dear Ms. Rhodus:

At its meeting on July 26, 2002, the State Bar of Michigan Board of Commissioners considered the following proposed amendments published for comment by the Supreme Court, and took the following positions:

1999-50 and 2000-27 – Proposed Amendments of Rules 7.205, 7.210, 7.215, 7.302 and 7.316

The Board voted to support the amendments in general, but urges the Court to retain discretion with respect to late applications for leave to appeal.

2001-10 - Proposed Amendments of Rule 6.005 and Proposed New Rule 8.123

The Board of Commissioners voted to oppose the proposed amendment in principle. The State Bar has received comments from a sub-entity of the Bar, which are attached. The Bar has convened an ad hoc committee to address the concerns raised, and expects to be providing further input to the Court in the near future.

2002-14 - Proposed Amendment of Rule 9.128

The Board of Commissioners voted to support the proposed amendment in principle.

2002-16 - Proposed Amendment of Rule 9.110

The Board of Commissioners voted to support the proposed amendment in principle.

2002-18 - Proposed Amendment of Rules 7.302, 7.304, 7.306 and 7.309

The Board of Commissioners voted to support the proposed amendment in principle.


2002-25 – Proposed Amendments of Rules 6.445 & 6.610

The Board of Commissioners voted to support the proposed amendments in principle.



Thank you for the opportunity to offer the State Bar's input on these issues.

Sincerely,


John T. Berry
Executive Director

by Glenn Peters

Enclosure: Comments from the Legal Aid Committee

cc: Janet Welch, General Counsel

MEMORANDUM

TO: Public Policy Committee, Board of Commissioners, State Bar of Michigan

FROM: Standing Committee on Legal Aid

RE: Administrative Order 2001-10 Proposed Amendment of MCR 6.005 and Proposed MCR 8.123 (Trial Court Plans for Selection and Compensation of Attorneys for Indigents and Records of Counsel Appointments).

DATE: July 25, 2002

The Legal Aid Committee opposes Administrative 2001-10 as written and urges the State Bar to oppose the Administrative Order and urge the Court to not act on this order until it has received the benefit of any report and recommendations from the Michigan Task Force on Improving Public Defense Services. Although the proposed rule does take important steps toward responding to abuses in the appointment and compensation process, the proposed rule falls far short of the American Bar Association (ABA) *Principles of an Indigent Defense Delivery System*, which have been adopted by the State Bar of Michigan and which offers “a practical guide for government officials, policymakers and others who are charged with creating and funding new, or improving existing systems by which public defense services are delivered in Michigan. (Adopted by ABA February, 2002 and the MSB April 27, 2002). We note the following concerns:

1. Although the proposed rule, seeks to diminish the role of judges in selecting and compensating defense counsel, the first *Principle* states that in an indigent defense delivery system, the judiciary should not select lawyers for specific cases. Adherence to this principle would help assure more uniform practices and administration of justice throughout the state.
2. We are concerned about the proposed provision which would give the Chief Justice discretion to veto or grant exceptions to any plan that fails to conform to the proposed Rule 8.123. Under the proposed rule, the Chief Justice could “exempt a trial court from any requirement of this rule that would impose an unreasonable burden on that court.” [MCR 8.123(G)]. The rule gives no guidance as to what types of burdens can be considered, or what is “unreasonable.” This lack of standards will continue to result in inconsistent local practices. We recommend that the State Bar adopt the position of the Task Force on Improving Defense Services and Principle 1 of the ABA Principles, i.e. that Public funded counsel selection and compensation plans should be designed, adopted and overseen by nonpartisan boards or commissions (See ABA, MSB, Task Force Principle 1).
3. We are concerned that the proposed rule continues to allow substantial local variations in practices and procedures. This patchwork of systems which would fail to meet the Task Force’s stated mission of “more uniform justice in Michigan’s diverse communities.” It would be far preferable to address problems in the indigent defense systems through a thoughtful and comprehensive study and recommendations, such as is under way with the Task Force. We hope the Bar will urge the Supreme Court not to act on this administrative rule until it has had an opportunity to review and consider the work of the Task Force and Michigan Bar Association, which has been under way for over a year. The Task Force is compiling information about the various systems throughout Michigan, as well as efforts to improve criminal defense systems both in and outside of Michigan, and will be developing a model plan. It is expected that a model plan will be completed by the end of the year.

Thank you for your consideration of these comments.